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SUBJECT: BRAZIL: A/S RADEMAKER'S MEETING WITH FOREIGN  
MINISTRY OFFICIALS ON NPT REVCON, ARTICLE 98

Classified By: POLITICAL COUNSELOR DENNIS HEARNE. REASONS:  
1.4(B)(D)

1. (C) Introduction: Assistant Secretary of State for Arms Control and Non-Proliferation Stephen G. Rademaker met on 11 April with his Brazilian Foreign Ministry counterpart, Ambassador Antonio Guerreiro, Assistant Secretary for International Organizations (in the MRE structure this includes UN and arms control/non-proliferation issues). Guerreiro was accompanied by senior aides from his UN and arms control divisions, but Guerreiro alone spoke to all of the issues throughout the meeting. A/S Rademaker was accompanied by Arms Control Bureau Senior Advisor Joan Corbett, WHA/BSC Regional Affairs Officer Carolyn Croft, AC/NP Special Advisor Carolyn Leddy, NP Bureau Foreign Affairs Specialist Steve Adams, DOD/OSD Attorney Advisor Musetta Johnson and Embassy PolCouns. A/S Rademaker and Guerreiro discussed goals for the May 2005 Non-Proliferation Treaty Review Conference, general proliferation issues, and Article 98. Principal themes are reported below. End introduction.

#### U.S. PRESENTATION ON NPT REVCON AND PROLIFERATION ISSUES:

2. (SBU) A/S Rademaker provided Guerreiro with a briefing on USG views and goals for the 2005 NPT Revcon, and provided slides of the presentation to the GOB interlocutors. A/S Rademaker stressed U.S. commitment to the NPT, and said the U.S. views noncompliance as the critical challenge to the treaty at present. Indeed, in the USG view, the treaty is "under siege" as evidence increasingly points to some member states undercutting their treaty obligations by noncompliance with the basic NPT obligations under Article II and III, use of Article IV (peaceful nuclear cooperation) as a cover for weapons programs, and ineffective prevention of transfer of weapons technologies to non-state networks. In this regard, A/S Rademaker emphasized the importance of a high standard for safeguards among supplier states as a condition of supply, including Brazil, and urged adoption of the Additional Protocol by Brazil. Similarly, he stressed the importance of broad endorsement of UNSCR 1540 and encouraged Brazilian participation in the Proliferation Security Initiative.

3. (C) A/S Rademaker characterized the situation with Iran as "very serious" and said the USG and Europeans will support referral of the matter to the UNSC if Iran breaks with any aspect of the current IAEA suspension. A/S Rademaker provided a detailed presentation of the USG record on disarmament under Article VI, noting the May 2001 statement by President Bush that the U.S. nuclear posture is that of achieving a credible deterrent with the lowest possible number of nuclear weapons consistent with national security needs, including obligations to allies. He outlined USG positions on stockpile reductions, fissile materials, and cooperation with Russia, noting that U.S. assistance to Russia for nuclear security efforts, together with aid from G-8 allies, now totals USD 20 billion. In response to comments by Guerreiro on new U.S. nuclear arms programs and the lack of U.S. adherence to the CTBT, A/S Rademaker emphasized that the robust nuclear earth penetrator is only a conceptual design study -- there are no active R and D efforts on these systems. The U.S. Senate has not ratified the CTBT principally because of concerns relating to the verifiability of the treaty. For the United States, it is important to be assured that all other countries have given up nuclear testing if they are to do so, because for all nuclear weapons states it would be useful to retain the right, if a need arises in the future, to test nuclear weapons. Nuclear weapons are man-made devices that deteriorate over time like all other man-made devices. He also noted that the U.S. has unilaterally observed a 10 year moratorium on testing and has no testing planned now or in the future.

#### GOB REACTIONS:

4. (C) Guerreiro provided the following comments in response (organized below thematically):

--Brazil, the AP and Rezende: Echoing statements made at various times over the past several months by FM Amorim and other GOB officials, Guerreiro said the GOB had never said it would not adhere to the AP, and he "hoped" that Brazil would

sign the protocol this year, although it would be after the May Revcon. Brazil and the IAEA have also successfully completed their agreement on agency inspections of Brazil's Rezende facility, Guerreiro said, although some ongoing technical questions are still being resolved.

--Iran: Guerrerio said the GOB had sternly and repeatedly told Iranian delegations that Iran had "messed things up" (for other non-weapons nuclear states) and that Iran must cooperate fully with IAEA, since non-weapons states must have impeccable credentials under all articles of the treaty in order to challenge weapons states on disarmament issues. He added that the statutes of the IAEA required that the Board of Governors refer Iran's case to the UNSC if the agency exhausts all of its authorities and resources but achieves no resolution with Iran, and Brazil understands the UNSC would then have to "live up to its obligations." Guerreiro and A/S Rademaker agreed on the necessity of taking a "graduated approach" -- i.e., not starting immediately with sanctions -- in the event Iran is referred to the council.

--NPT Revcon: Noting that Brazilian Revcon President Duarte has "a tough job ahead of him," Guerreiro said the GOB thinks there should be a strong effort at an agreed agenda at the meeting's outset, and will seek USG cooperation in this effort. He also noted GOB agreement with an emphasis on compliance but said the Revcon should aim at producing a "balanced agreement" that addresses all pillars of the treaty (i.e., disarmament as well as nonproliferation). Brazil will not oppose consecration of adherence to the Additional Protocol as a condition of supply, "but that cannot be the only proposal," he said. Discussion of regional issues will be important during the conference, and it is "unavoidable" that Israel will come up in the Middle East-Iran context, Guerreiro opined. In other potential problem areas, Guerreiro saw little prospect for a robust agreement on restrictions on enrichment and processing technologies. Guerreiro expected the Revcon would endorse UNSCR 1540 as "a good step" in stemming technology flows to non-state actors.

--Proliferation: While agreeing that compliance is a major challenge for the NPT, Guerreiro did not agree with the statement that the treaty is "under siege" -- rather he posited rather that the NPT has been a success, witness the fact that the number of weapons states is still fairly small, despite the worried predictions of John F. Kennedy and others that as many as thirty countries would some day have nuclear arms. However, on a related point, Guerreiro said the GOB believes it is critical that the NPT Revcon not inadvertently give recognized weapons state status to non-treaty-party countries with declared or suspected arms programs. This is "a highly sensitive issue" for Brazil, South Africa and other countries that have voluntarily renounced nuclear weapons programs only to see others who have flouted non-proliferation principles achieve de facto status (bordering on acceptance) as military nuclear powers.

--PSI: Guerrerio called the Proliferation Security Initiative a "fair exercise," but not one that Brazil had studied in depth or considered joining until now. However, Brazil will send a military observer to an upcoming PSI exercise in Portugal, and may then look more carefully at the possibility of participation.

#### ARTICLE 98:

15. (C) A/S Rademaker outlined USG motives for seeking Article 98 agreements to provide protection for American citizens from extradition to face trial at the International Criminal Court. He explained how U.S. national experience with independent prosecutors had left negative views in American society about unaccountable prosecutors with broad mandates, and related fears that Americans -- given the U.S. leadership role in international affairs -- could be frequent targets for specious and politically-driven indictments. The U.S. wants to find a way to be a "good neighbor" to the ICC, perhaps in time able to offer some degree support that approximates the critical legal, technical and investigative assistance offered by the USG to the ICTY and ICTR over the years. But that can only come about if the U.S. has a "comfort level" with the direction and activities undertaken by the court, and if U.S. personnel are protected by Article 98 agreements with a wide range of states.

16. (C) Guerreiro politely but unequivocally stated that Brazil would not sign an Article 98 agreement with the U.S., and views the idea as a "non-starter." Brazil is a strong supporter of the ICC and believes the necessary checks and balances are in place to deter the kinds of concerns outlined by A/S Rademaker. Brazil remains convinced that it is better to have a permanent criminal court than ad hoc tribunals. Noting the abstention by Brazil on 31 March on the UN resolution that indicated the ICC for accountability and investigations into the Sudan-Darfur atrocity allegations, but with special protections carved out at U.S. insistence, Guerreiro said FM Amorim himself had issued instructions for

abstention and considered a resolution with special protections from ICC authorities to be a "dangerous precedent."

17. (C) Comment. A/S Rademaker's visit provided a valuable opportunity to consult at a senior level with the GOB on a wide range of issues. Guerreiro's comments on likely Brazilian adherence to the Additional Protocol this year and support for the AP as a condition of supply at the May Revcon are encouraging. Less promising was Guerreiro's categorical rejection of discussing an Article 98 agreement with the U.S.

18. (U) The Assistant Secretary cleared this cable.  
DANILOVICH